SUPP

LIBRARY
EME COURT, U. S.

U. S.
D)
JUL 10 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 264

HELEN JOAN BERKAW, *et al.*,

Petitioners,

v.

MAYFLOWER CONGREGATIONAL CHURCH,
a Michigan corporation,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN, DIVISION I

BRIEF FOR RESPONDENT IN OPPOSITION

LOREN T. WOOD
Counsel for Respondent
60 Wall Street
New York, N. Y. 10005

JOHN T. REDMOND
H. GORDON WOOD
LAURENCE D. CONNOR
of Counsel

TABLE OF CONTENTS OF BRIEF

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	3
ARGUMENT:	
The petition should be denied because the decisions of the Circuit Court and the Michigan Court of Appeals are manifestly correct and no reason for granting a writ is shown	5
CONCLUSION	9

Table of Cases Cited

Cadman v. Kenyon, 306 N.Y. 151 (1953)	1
First Congregational Church & Society of Burlington, et al. v. Evangelical & Reformed Church, et al., 305 Fed. 2d 724 (CA 2, 1962) Cert. den. 372 U.S. 918 (1963)	1
Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952)	9
Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960)	9

PAGE

Maryland and Virginia Eldership of the Churches of God, et al. v. Church of God at Sharpsburg, Inc., 90 S. Ct. 499 (1970) 254 A. 2d 162 (1969) 7, 8

Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 2, 5, 6, 7

Watson v. Jones, 13 Wall 679 (1871) 6, 8, 9

Statutes Cited

Constitution of the United States, Amendment XIV, Section 1 ..... 2, 1a

Mich. C.L. 1948, Section 458.07 8

INDEX TO APPENDIX

Constitution of the United States—Amendment XIV 1a

Bill of Complaint 2a

Answer 10a

IN THE

Supreme Court of the United States

October Term, 1969

No. 1696

HELEN JOAN BERKAW, *et al.*,

Petitioners,

v.

MAYFLOWER CONGREGATIONAL CHURCH,
a Michigan corporation,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN, DIVISION I

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinions below which deal with the subject matter of this petition are accurately cited by the petitioners. Additional aspects of the litigation are considered in *Berkaw* v. *Mayflower Congregational Church*, 1 Mich. App. 252 (1965) reversed 378 Mich. 239 (1966) cert. den. 385 U.S. 1036 (1966).*

---

* The history of the church union out of which the instant controversy arose can be found in *Cadman* v. *Kenyon*, 306 N.Y. 151 (1953); *First Congregational Church & Society of Burlington, et al.* v. *Evangelical & Reformed Church, et al.*, 305 Fed. 2d 724 (CA 2, 1962) cert. den. 372 U.S. 918 (1963).

Jurisdiction

The respondent accepts the petitioners' statement of jurisdiction.

Question Presented

Petitioners, claiming the rights of a faithful minority, seek the exclusive use of the assets and property of respondent, a Congregational Church, which is admittedly autonomous in all matters. They assert that the vote of a majority of the respondent's members to make it a part of the United Church of Christ, a union of the Evangelical and Reformed Church and Congregational Christian Churches, constitutes a departure from traditional Congregational doctrine and practice in a number of specified particulars. Respondent has denied the claim of departure and, therefore, the question presented in this church property dispute is: Are civil courts prevented from determining the ecclesiastical questions necessary to a resolution of the issue of departure by reason of First Amendment prohibitions as applied in *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969) and other related decisions of this court?

Statute Involved

In addition to the section of the United States Constitution and the statutory provisions set forth in the petition, this action also involves Section 1 of the Fourteenth Amendment to the United States Constitution which is printed in full in the appendix hereto (p. 1a, *infra*).

Statement of the Case

A consideration of the pleadings in this case provides the clearest exposition of the central issue presented and at the same time demonstrates the correctness of the decisions reached below.

The Bill of Complaint alleges, in substance: The defendant was organized as a church according to the faith and usage of the Congregational churches (R 3a);* its property was dedicated to the worship of God in accordance with the usages and practices of such denomination, the essential characteristic of which is the autonomy of the local church (R 3a-4a); in April of 1961, a majority of its members voted that the church become a part of the United Church of Christ, a union of Congregational Christian churches and The Evangelical and Reformed Church (R 4a-5a); such action by the majority worked a change in "religious practices not conformable with the origin and historical character of the faith . . . to which the local church practice and property is dedicated", and that such action diverts the property of the society to the support of doctrines fundamentally opposed to its characteristic doctrines; such changes occurred by reason of specified provisions in the Constitution and By-Laws of the United Church of Christ which, it is claimed, abridged or impaired the autonomy of the defendant in the following specified matters: (1) sacraments, (2) ordination of ministers, (3) calling of ministers, (4) freedom of control from any outside source (R 6a-7a). Plaintiffs, as a self-described faithful minority, seek to have full use and control of the church property and assets declared to vest in them, to the exclusion of the majority (R 9a).

---

* Unless otherwise indicated, figures in parentheses preceded by the letter "R" refer to pages of Respondent's Appendix and by the letter "P" to pages of Petitioners' Appendix.

Defendant's answer admits that in Congregationalism the local church possesses autonomy in all matters. Defendant further admits the existence of the Constitution and By-Laws of the United Church of Christ, but denies that they abridge or impair such autonomy, and further denies that they would work a change in the historic faith and practice of the respondent (R. 10a-11a).

Following joinder of issue, petitioners moved for summary judgment upon the ground that no issue of material fact existed with respect to those portions of the complaint which allege that the Constitution and By-Laws of the United Church of Christ impaired the autonomy of the local church in the four specified particulars.

Respondent cross-moved for summary judgment in its own favor upon the ground that it was entitled to judgment as a matter of law, there being no intrusion upon the autonomy of the local church by reason of the provisions contained in the Constitution and By-Laws of the United Church of Christ. The respondent also moved for accelerated judgment, claiming that the court lacked jurisdiction of the subject matter of the action by reason of the provisions of the First and Fourteenth Amendments to the United States Constitution. Petitioners' motion for judgment was denied by the Wayne County Circuit Court, the trial court which, however, granted respondent's motions and entered judgment dismissing the complaint (PP. 13-15).

The judgment of the Circuit Court was affirmed by the Michigan Court of Appeals upon the sole ground that the First and Fourteenth Amendments deny jurisdiction to civil courts of matters requiring the determination of questions of religious doctrine and practice. Under the circumstances, the Court of Appeals neither considered nor ruled upon the cross-motions for summary judgment (P. 21).

The Supreme Court of Michigan has denied petitioners' application for leave to appeal to it (P. 26).

ARGUMENT

The petition should be denied because the decisions of the Circuit Court and the Michigan Court of Appeals are manifestly correct and no reason for granting a writ is shown.

The fatal defect in the petitioners' case was clearly perceived and aptly stated in a single paragraph in the concurring opinion of Judge Fitzgerald in the Michigan Court of Appeals:

> "The instant case, however is amenable to the imminent prohibitions of *Mary Elizabeth** since the core decision here revolves around the question: What is congregationalism? No around-the-mulberry-bush reasoning can remove us from the fact that the question is ecclesiastical or, perforce, one of faith and creed, and thus precluded to us" (P. 23).

The respondent contends, and the courts below have held, that they lack jurisdiction of the subject matter of the action because the petitioners are asserting interests in church property which can only be determined through the resolution of an underlying controversy over religious doctrine and practice—an area of inquiry forbidden to the civil courts by the First Amendment to the United States Constitution. Such was the holding of this Court in *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) which respondent contends is conclusive of the question presented here.

The parallels between the *Presbyterian Church* case and the instant case are evident. There, as here, the dispute centered over the control of local church property. Both

---

* The reference is to *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

the general church and the local church asserted exclusive rights over such property. The local church, based its claim of right on the ground that the general church had departed from traditional doctrine and practice. Among other claims, it was charged that the general church had departed from its original faith and practice in ordaining women as ministers, in the dissemination of publications denying the Holy Trinity, in causing its members to remain in the National Council of Churches of Christ and in supporting the removal of Bible reading and prayers by children in public schools.

The Supreme Court of Georgia affirmed a judgment entered upon a jury verdict in favor of the local church on the issue of departure. This Court reversed the judgment so affirmed and, in doing so, re-affirmed the principle first announced in *Watson* v. *Jones*, 13 Wall. 679 (1871) that to permit a civil court to determine ecclesiastical questions would be wholly inconsistent with the American concept of the relationship between church and state. Although the decision in the *Presbyterian Church* case, acknowledged that there were areas where civil courts could properly determine church property disputes without jeopardizing First Amendment values, it left no doubt that a civil court would become involved in matters "at the very core of religion" where the theory upon which the case is brought requires the court to decide whether the challenged actions of a church depart substantially from prior doctrine and practice. To make such a determination, this Court said, would of necessity involve the making of interpretations of the meaning of church doctrine and the relative importance of such doctrine in the overall body of doctrine and practice of the church, a function which it rejected, stating:

> "Plainly, the First Amendment forbids civil courts from playing such a role."

The present case is clearly such a forbidden case. The petitioners have asserted exclusive rights in the property

and assets of the respondent church. Their entitlement to such rights rests entirely upon their claim that they have remained faithful to the traditional doctrines and practices of the Church from which they contend the majority has departed by voting to make the respondent a part of the United Church of Christ. Petitioners allege that to make the respondent a church of the United Church of Christ and subject to its constitution with respect to sacraments, ordination of ministers and calling of ministers would work "a change in religious practices not conformable with the origin and historic character of the faith" to which the local church property is dedicated (Complaint par. 6 R 7a-8a). This allegation is categorically denied by paragraph "6" of the answer (R 11a). Petitioners' right to relief, therefore, depends entirely upon the determination of the issues thus framed which go to the "very core" of Congregationalism. The Michigan Court of Appeals in affirming the dismissal of the complaint correctly recognized the limitations placed upon a civil court's power to determine such issues by this Court's decision in *Presbyterian Church* case:

> "We consider the Mary Elizabeth decision to be controlling in the instant case. The fundamental inquiry in this case was whether the majority, by voting to become a part of the United Church of Christ, departed from congregational doctrine. Clearly, therefore, in order to grant the relief plaintiffs request, ecclesiastical issues regarding departure from doctrine must be resolved by civil courts. Such a determination was expressly prohibited by *Mary Elizabeth*" (PP. 19-20).

Petitioners argue that the *Presbyterian Church* case does not bar the maintenance of the present action because it can be decided upon neutral principles of law, a practice which this Court approved in *Maryland and Virginia Eldership of the Churches of God, et al.* v. *Church of God at Sharpsburg, Inc.*, 90 S. Ct. 449 (1970). Significantly, in the *Church of God* case, unlike the instant case, no ecclesiastical questions were presented for determination. Indeed, the Maryland Supreme Court noted in its opinion

that the record in that case did not disclose the nature of the doctrinal dispute between the parties.*

Petitioners, straining to bring themselves within the rationale of the *Church of God* case, argue that this action can be resolved on the basis of applicable Michigan statutes which they say are neutral principles of law. In doing so, however, petitioners ignore a fundamental distinction between the two cases. In the *Church of God* case the court was dealing with a section of the Maryland General Religious Law which applied equally to all religious corporations formed under it without regard to doctrinal discipline or other ecclesiastical matters. In this case, however, the petitioners rely upon a Michigan statute which is applicable only to Congregational churches. Such statute cannot be considered a neutral principle nor can it, as petitioners suggest, be applied as determinative of property rights in this case. In this regard, the argument is made that because the respondent was incorporated under a statute applicable to Congregational churches, its property may only be used for Congregational religious purposes in accordance with the statutory mandate Mich. C. L. 1948, Section 458.07. We submit that any attempted application of the statute to a case in which the Congregational nature of the use of church property is in dispute would necessarily involve a judicial determination of what constitutes Congregational religious purposes—a proscribed area of inquiry under the *Presbyterian Church* case.

Finally, petitioners' argument that the Michigan statute creates an express trust which falls within the first class of cases mentioned in *Watson* v. *Jones* must fail. The court there was referring to the creation of an express trust by an individual, with all the formalities attendant upon such an act, and not to the possibility of the creation

---

* *The Maryland and Virginia Eldership of the Church of God, et al.* v. *The Church of God at Sharpsburg, et al.*, 254 A2d 162, 169 (1969).

of a trust by statute. To condone the latter would, of course, permit the sovereign to accomplish by legislative act that which it is prohibited from accomplishing by judicial act, *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190 (1960); *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). In any case, the express trust theory of *Watson* v. *Jones* appears to have been circumscribed by the *Presbyterian Church* case at least to the extent stated by Mr. Justice Brennan in footnote 4 to his concurring opinion in the *Church of God* case:

> "Except that 'express terms' cannot be enforced if enforcement is constitutionally impermissible under Hull. Any language in Watson, supra, at 722-723, which may be read to the contrary must be disapproved. Only express conditions which may be effected without consideration of doctrine are civilly enforceable."

Conclusion

Although the issue herein is admittedly of importance, it has been decided in conformity with rules established by this court relating to the determination of ecclesiastical issues in the resolution of church property disputes. Those principles are clear and there is no issue in this case which would warrant intervention by the Supreme Court, nor is there any conflict between the decision below and the applicable decisions of this court.

The petition should be denied.

Respectfully submitted,

LOBEN T. WOOD
Counsel for Respondent

JOHN T. REDMOND
H. GORDON WOOD
LAURENCE D. CONNOR
of Counsel

July 9, 1970

APPENDIX

Constitution of the United States—Amendment XIV

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Bill of Complaint

STATE OF MICHIGAN

IN THE

CIRCUIT COURT FOR THE COUNTY OF WAYNE

IN CHANCERY

No. 611604

HELEN JOAN BERKAW, GRACE PFAFF, FRANK C. SMITH and ROY L. STEPHENS, JR.,

Plaintiffs,

vs.

MAYFLOWER CONGREGATIONAL CHURCH, a Michigan corporation,

Defendant.

BEAUMONT, SMITH & HARRIS
Attorneys for Plaintiffs
1100 Ford Building
Detroit 26 Michigan
WOodward 2-1903

Helen Joan Berkaw, Grace Pfaff, Frank C. Smith and Roy L. Stephens, Jr., bring this their Bill of Complaint against Mayflower Congregational Church, a Michigan corporation, and respectfully show:

1. Plaintiffs are residents of the City of Detroit, County of Wayne, Michigan, and are members of full age and good standing of Mayflower Congregational Church, the Church edifice and the accompanying structures of which are located at 7301 Curtis Avenue in the said city,

and the same, including the land thereof, is of a value of $470,000 and upwards. Plaintiffs bring this suit as such members of said Church for the protection of the true rights and interests of said Church and of themselves as members thereof and of other persons who may desire to worship according to the usages and practices to which said property was dedicated.

2. The said Church was organized in the year 1930 and now exists as a corporation under Act 53 of the Public Acts of 1901, entitled "An Act For The Organization Of Corporate Congregational Churches". The purpose of said corporation as stated in its Articles of Incorporation which has continued ever since without amendment or change is to worship and labor together as a Church according to the faith and usages of the churches commonly called Congregational.

3. The churches commonly called Congregational originated in the United States with the faith and usages brought to America by those who came over on the Mayflower and were by them and their successors developed and observed. The churches commonly called Congregational are not a denomination in the sense of the Episcopal, Methodist or Presbyterian, but are a fellowship of local churches each wholly independent in every particular. The churches commonly called Congregational are associated (not united) in Associations, Conferences and a General Council but no one of said three last mentioned organizations or all three together have any power or authority over any local church. The function of each of said three organizations is primarily to carry forward any work in which the local churches or many of them may be willing to cooperate. The said three organizations each can only request, suggest or invite action by the local churches and the local church gives such attention thereto as it may

please even to the extent of completely ignoring the same. The action of a local church, whatever it may be, does not affect its standing or relation to the Association, Conference or Council. The local church is thus completely autonomous and there is nothing which a church or organization of churches can do which is not "its own affairs" of the local church. Without burdening the Court with a recital of all the things which are "its own affairs" of the local church, among other such things are (a) what shall be considered to be sacraments and how interpreted and observed, (b) to call and dismiss its Ministers in such manner and for such cause as it may please without let, hindrance or advice from any source, (c) to ordain as a Minister the person it may desire to call as a Minister if not already ordained, or if not ordained in manner and effect acceptable to the local church, and (d) to be free of any imposition or request from any outside source in respect of any of said matters (a), (b), (c) and (d), or any other matter whatsoever.

A new way, as at the time of the landing of the Mayflower of church government was thus developed which freed each congregation from all external, state or ecclesiastical control and guaranteed that freedom including the calling and ordaining of its own Ministers and officers, the formulation of its own covenants and confession of faith, to adopt its own sacraments and the interpretation and observance thereof and all other particulars of church government which can be conceived. Such way has continued in the local Congregational churches to this day and still continues so long as they remain Congregational.

4. More recently, the General Council of the Congregational Christian Churches (note the plural) in cooperation with the Evangelical and Reformed Church (note the singular) have formed a new church which they have named

the United Church of Christ. This new Church is intended to be constituted of the E & R Church and all its local churches and such of the local Congregational Churches as may desire or be induced "to become a part of said United Church". (Constitution 13) and a basic unit thereof. (Constitution 7.) The General Council of the Congregational Christian Church in so doing could not rightfully claim and did not claim any power or authority to bind the local churches. A Constitution for said United Church has been formulated and settled between said General Council and said E & R Church authorities and General Synod of said United Church and the same has now been submitted by said General Synod to each local Congregational church inviting approval and action in becoming "a part of said United Church". A meeting of the members of local Mayflower Congregational Church was held on the 30th day of April, 1961, at which it was voted by 253 members for and by 204 members including Plaintiffs herein against approval of said Constitution and becoming "a part of said United Church". The said Constitution is not to be put into effect until the meeting of the General Synod of the United Church which convenes July 2, 1961, and is to be put into effect if at that time at least two-thirds of the Synods of the E & R Church and two-thirds of the local Congregational churches which have voted thereon have voted approving said Constitution and to becoming a part of said United Church. By-Laws consistent with said Constitution have also been formulated by the same persons, organizations or authorities and submitted along with said Constitution and serve to implement, interpret and give color to the terms and provisions of said Constitution. The making and amending of the By-Laws is solely within the power of the General Synod (Constitution 61).

5. The said Constitution while it states (Sec. 21), "the autonomy of the local church in the management of its own affairs is not subject to be abridged or impaired" nevertheless does abridge and impair what have been to this time and are today "its own affairs" of the local church. (a) Sacraments are dealt with in Sec. 2 of the Constitution where it is stated, United Church recognizes two sacraments, "Baptism and the Lord's Supper or Holy Communion". Thus, this subject is taken out of being one of "its own affairs" of the local church. (b) Ordination of Minister is by Sec. 27 declared a "rite" of United Church * * * through an association. (The person desiring ordination must apply to the association (By-Law 109). He is examined by "The Committee on the Ministry of the Conference and Association" (By-Law 110). He is "expected" to have studied in a "theological seminary approved by the Council for Church and Ministry" of the United Church. (By-Law 104.) This is far from the existing practice by which ordination is by a conciliary council convened by the local church. Under this practice the association may be called to act as the conciliary council but if so acts as an invitee and agency of the local church. Under the Constitution and By-Laws the Association acts as the agency of the United Church and with sole and exclusive authority in respect of ordination. (c) Calling of a Pastor is "by such *procedure* as (the local church) shall determine" and is by the Constitution stated to be one of "its own affairs" of the local church but this is limited to procedure and does not extend to the substantive who may be called, where from, and his qualifications. The call is declared to be "a concern of the Church at large" (Constitution 30). A Minister of another denomination can be called only if the association grants him Privilege of Call, "and this is done only after examination by the Committee on the Ministry of the Conference and Association". (By-Law 132.) "Installation or recognition" upon ac-

ceptance of a call is a function of the association (By-Law 128). (d) Amendment of the Constitution is dealt with in Sec. 88. The amending power is solely in the General Synod of the United Church and the Conferences of that church. The local church has no voice in the amendment. They merely have authority to look at a proposed amendment and possibly to protest against it. There is no limitation in the Constitution on what may be done by way of amendment. While a local church if any amendment were unacceptable to a majority of the members of a local church voting thereon has authority "to withdraw by its own decision from United Church * * * at any time without forfeiture of ownership or control of any real or personal property owned by it", nevertheless the rights which are being asserted by this Bill of Complaint commonly referred to as the rights of a "faithful minority" are completely cut off and extinguished when the local church becomes "a part of the United Church".

6. Plaintiffs charge that to make Defendant Mayflower Congregational Church "a part of United Church" and subject to the Constitution which has been submitted would work "a change in religious practices not conformable with the origin and historic character of the faith * * * to which the local church property and practice is dedicated", diverts "the property of the society to another denomination or to the support of doctrine fundamentally opposed to the characteristic doctrines of the society" and is a violation of the rights of "those who faithfully adhere to the characteristic doctrines of the Church and thereby deprives the minority of the use of the property", that is to say, these Plaintiffs and the other members who voted with them as stated in Paragraph 4 hereof. The same results more particularly and demonstrably from the four matters stated under letters (a), (b), (c) and (d) in Paragraphs 3 and 5

foregoing as well as in many other particulars which will appear from a reading of said Constitution.

7. Plaintiffs charge that the action voted upon at the congregational meeting held Sunday evening, April 30, 1961, was in effect an attempt to amend the Articles of Association of Defendant Church and such action was void because the action was not supported by two-thirds of the votes cast at such meeting. Article XV, Section 2 of the By-Laws of Defendant Church provides that "any amendment to the Articles of Association or By-Laws shall require two-thirds of the votes cast at such meeting".

WHEREFORE IT IS PRAYED:

1. That the Court declare and decree that the vote of the members of Defendant Church by which said Church was voted to become a part of said United Church of Christ and the Constitution thereof as submitted approved is beyond the power of a majority of the members of said Church to vote and is null and void and of no effect.

2. That the corporation of said Defendant Church, its Ministers, Boards, officers and agencies and other representatives be permanently and perpetually enjoined and restrained by a final decree from becoming or making said Church a part of said United Church or taking any action to that end and that pending the final decree herein a writ of temporary injunction be issued of like force and effect.

3. That if prior to the filing hereof or the entry of a final decree herein any action shall have been taken to certify to said United Church or the General Synod thereof or any officer or agency of either the vote of the members of Defendant Church at said meeting on April 30, 1961,

or otherwise to make Defendant Church "a part of said United Church" that the Minister and officers of Defendant Church be required to transmit a copy of the decree herein to the same officers or agency of said United Church or General Synod thereof as was the certification of said vote.

4. That this Court by its final decree quiet the title to the real estate and personal property of Defendant Church in the Plaintiffs herein and such other persons who may desire to worship according to the faith and usages of the churches commonly called Congregational, and by such decree determine that the real estate and other property of Defendant Church may not be used except according to the faith and usages of the churches commonly called Congregational.

5. That Plaintiffs may have such further and other relief as to the Court may seem expedient for the protection of the true rights and interests of Defendant Church and these Plaintiffs and other members constituting the faithful minority thereof.

HELEN JOAN BERKAW
GRACE PFAFF
FRANK C. SMITH
R[illegible] B. STEPENS, JR.
Plaintiffs

Answer

STATE OF MICHIGAN

IN THE

CIRCUIT COURT FOR THE COUNTY OF WAYNE

[SAME TITLE]

Defendant, by its attorneys, Dykema, Wheat, Spencer, Goodnow & Trigg, answers the Complaint as follows:

1. Answering the first sentence of paragraph "1", Defendant admits that the church edifice and accompanying structures are located at 7301 Curtis Avenue in Detroit, but is without sufficient knowledge to form a belief as to the remainder of the allegations of said sentence and therefore leaves Plaintiffs to their proof. Defendant denies the allegations of the second and last sentence of paragraph 1.

2. Defendant admits the allegations contained in paragraph "2" of the Complaint.

3. The Defendant admits the allegations contained in paragraph "3" of the Complaint, but avers that:

(a) The relationship between a local church and the Association, Conference or General Council is a bilateral one and it is conceivable that an action of a local church can be so scandalous as to cause the termination of its membership in such organizations.

(b) Complete autonomy is not confined to Congregational churches but exists in the churches of the United Church of Christ, and Defendant respect-

fully refers the Court to the Constitution and By-Laws of the United Church of Christ, which have already been filed and made a matter of record in this court, and which acknowledge that autonomy.

4. Defendant admits the allegations contained in paragraph "4" of the Complaint, except Defendant denies the characterization of the United Church of Christ as "a new church" and for the character of the United Church Defendant respectfully refers the Court to the Constitution and By-Laws of the United Church of Christ which have already been filed and made a matter of record in this Court.

5. Defendant denies the allegations of paragraph "5" of the Complaint, and for the meaning and effect of the Constitution and By-Laws of the United Church of Christ respectfully refers this Court to true copies of said documents which have already been filed and made a matter of record in this Court. As shown below in the Motion to Strike contained in this pleading, Defendant objects to the inclusion of improper evidentiary matters and opinions and conclusions contained throughout paragraph "5" of the Complaint to which it cannot properly form a responsive pleading.

6. Defendant denies the allegations contained in paragraph "6" of the Complaint, and for the true meaning and effect of the Constitution and By-Laws of the United Church of Christ respectfully refers the Court to true copies of said documents which have already been filed and made a matter of record in this Court.

7. Defendant denies the allegations contained in paragraph "7" of the Complaint.

Answer

AFFIRMATIVE DEFENSE

The issues raised by the Bill of Complaint herein have previously been determined against Plaintiffs in two separate actions in the Courts of the State of New York and of the United States respectively, and the judgments rendered therein are res judicata and constitute a complete defense to this cause by reason of the Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1 and 28 U.S.C. Section 1738.

MOTION TO STRIKE

Defendant moves, pursuant to Michigan General Court Rule 115.2, that paragraph "5" of the Complaint be stricken, except for the first and last sentences thereof, on the ground that the inclusion of selected phrases and terminology taken out of context from the Constitution and By-Laws of the United Church of Christ and the legal interpretation and conclusions contained therein are objectionable and constitute improper pleading in violation of Michigan General Court Rules 111.1(1) and 111.9(1).

MOTION FOR SUMMARY JUDGMENT

Defendant moves the court pursuant to Michigan General Court Rule 117 for a Summary Judgment in its favor against the Plaintiffs on the ground that (1) there is no genuine issue as to any material fact and Defendant is therefore entitled to judgment as a matter of law, and (2) that the Complaint herein fails to state a claim upon which relief can be granted.

This Motion is based on the files and records herein, on the Affidavit of H. Gordon Wood attached hereto and made a part of this pleading and on Briefs in Support of Motion and other papers which will be subsequently filed.

Answer

MOTION FOR ACCELERATED JUDGMENT

Defendant moves the court in the alternative for judgment against Plaintiffs pursuant to General Court Rule 116 on the ground that this Court lacks jurisdiction over the subject matter set forth in the Complaint by reason of the First Amendment to the United States Constitution. This Motion is based on the files and records herein and on the Brief in Support of Motion for Accelerated Judgment and other papers which will be subsequently filed.

WHEREFORE IT IS PRAYED:

1. That this cause and Plaintiffs' Bill of Complaint be dismissed and that judgment on the merits with costs be rendered in favor of Defendant.

2. That all material contained in paragraph "5" of the Complaint with the exception of the first and final sentences in that paragraph be stricken on the ground that the allegations contained therein constitute improper pleading and violate Michigan General Court Rule 111.1(1) and 111.9(1).

3. That Summary Judgment pursuant to Michigan General Court Rule 117 be entered for the Defendant on the ground that there is no genuine issue as to any material fact and the Defendant is therefore entitled to judgment as a matter of law and on the further ground that the Complaint fails to state a claim upon which relief can be granted.

4. That judgment pursuant to Michigan General Court Rule 116 be entered for the Defendant on the ground that the Court lacks jurisdiction over the subject matter set forth in the Complaint.

DYKEMA, WHEAT, SPENCER, GOODNOW & TRIGG
By H. GORDON WOOD
And LAURENCE D. CONNOR
For the Firm and Individually
Attorneys for the Defendant
2700 Penobscot Building
Detroit, Michigan 48226
963-6040

Dated: January 31, 1967